REMARKS

Overview

Claims 15-29 are pending in this application. Claims 15, 17, 18, 19 and 29 have been amended. The present response is an earnest effort to place all claims in proper form for immediate allowance. Reconsideration and passage to issuance is therefore respectfully requested.

Claim Amendments

Independent claim 15 has been amended in several ways. First, claim 15 has been amended to make the purpose of providing the marketing services explicit, namely "to assist in raising income of the agricultural producers." As will later be explained, it is believed that this will assist in clarifying distinctions with prior art references such as Hay et al. and Remley et al. which focus on increasing profits for buyers and not producers. In addition, claim 15 has been amended to refer to "written" agricultural marketing "action" plans. This amendment is for clarity, as it appears from the rejections given that the term agricultural marketing plans was being construed very broadly so as to encompass any marketing decision even marketing decisions made absent a tangible agricultural marketing plan or plan of action. Claim 15 has also been amended to indicate that the agricultural producers are "independent." Claim 15 has been amended to also require "forming a plan of action for agricultural marketing which makes decisions based on the marketing information, the financial assessment, the marketing financial risk score, the pre-sell quantities, and the level of crop revenue insurance" to further make elicit what a marketing plan is. Claims 17 and 18 have been amended to replace --enterprise-- with "business" where appropriate and refer to the marketing plan as "independent" to clarify that the

marketing plan is for a producer. Claims 18 and 19 have been amended to make clear that the plan is an action plan. Claim 29 has been amended to make clear the difference between a business and an enterprise (i.e. corn is one enterprise, soybeans another enterprise, etc.).

Claim Rejections Under 35 U.S.C. § 103

Claims 15, 17, 23 and 29 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Hay et al. (US 2002/0059091 A1) in view of Remley et al. (US 2002/0023052 A1). These rejections are respectfully traversed. Before addressing each rejection, it is observed that Hay et al. and Remley et al. alone or in combination are significantly different from the claimed invention. To assist the Examiner, some remarks regarding fundamental differences are provided.

The context of Hay et al. is one which intended to primarily benefit the buyer of crops and not a producer. This is clear from paragraph [0068] which states "The selection is made to keep the price to the buyer down while also considering the overall risk profile of being able to deliver the product, and the profit to be attained by the agronomic entity." The buyer recognizes there is risk to a crop producer including marketing risk and uses that knowledge to entice the producer into a contract at only what Hay et al. refers to as a "reasonable profit" to the producer. How would a buyer know what a "reasonable" profit to a producer is? This would require extensive knowledge about a producer's operation. Thus, Hay et al. is directed towards buyer driven contract production which keeps the price down. Both the buyer and the producer cannot benefit from keeping the price down. In a contract production situation, a producer is not exposed to market risk but only to production risks. For that reason, a producer does not have the opportunity of increasing income due to changes in the market, as they are not just foregoing

the risk of lower prices, but also the opportunities of higher prices. A production contract is typically defined as an agreement where a producer agrees to produce and deliver a certain amount of product at a contract price, as opposed to a market price. The contract price may end up being higher or lower than the market price at time of delivery. A production contract puts a ceiling on the potential income of a producer for the benefit of the buyer.

The context of Remley et al. is also directed towards contract production. Like Hay et al., Remley et al. recognizes that farmers are subject to risk and therefore entices farmers with production contracts. Production contracts do allow a producer to eliminate market risk, but also limit income potential. A production contract is not a market contract. Agreeing to enter a production contract may be a marketing decision, but it is not an independent marketing plan that offers opportunities of higher prices. A production contract is defined as an agreement where a producer agrees to produce and deliver a certain amount of product at a predetermined contract price as opposed to a market price. The contract price may end up being higher or lower than the market price at time of delivery. A production contract puts a ceiling on the income of a producer for the benefit of the buyer.

Thus, when taken as a whole, both Remley et al. and Hay et al. teach away from the claimed invention. They teach that a producer should use a production contract in order to manage their risks instead of attempting to independently manage marketing risks through a strategic marketing plan. The fact that a buyer is willing to contract with a producer makes a statement about the risks involved and who bears them. Contract production situations result in lower income potential for producers.

The differences between Remley et al., Hay et al. and claim 15 become even more pronounced upon review of the claim language. Claim 15 is directed towards "a computer-

assisted method of providing agricultural marketing services to independent agricultural producers to assist in raising income of the agricultural producers." As previously explained, both Remley et al. and Hay et al. are buyer focused instead of producer focused and their concern is not with raising income of the agricultural producers, but instead with providing a contract price which is a producer is willing to accept.

Hay et al. and Remley et al. are directed towards production contracts as opposed to commodity markets. Thus, neither Hay et al. nor Remley et al. disclose the step of "developing written independent agricultural marketing plans for agricultural producers, the agricultural marketing plans requiring updated marketing information." The Examiner has cited to paragraphs [108] and [118] of Hay et al. for this proposition. Note that the planning involved in the cited paragraphs is from a buyer's perspective and there is no disclosure of "written agricultural marketing plans for agricultural producers" let alone such a plan which requires "updated marketing information." If the Examiner is attempting to equate agreement to contract with a marketing plan, note that claim 15 is directed towards a plan which requires "updated marketing information." A production contract is not a marketing plan. If the Examiner is attempting to equate a marketing decision (i.e. a decision to enter a production contract) with a marketing plan, such a plan would not require "updated marketing information." Once a production contract is entered into, the producer no longer has the flexibility to take advantage of market movements. Thus, this rejection to claim 15 must be withdrawn.

Claim 17 requires "receiving a price risk from a marketing service, wherein the price risk is a price risk of a commodity market and is determined based on a computer analysis." Neither Hay et al. nor Remley et al. disclose these limitations. The Examiner cites to paragraph [118] and FIG. 2 of Hay as disclosing this limitation. This is not correct. Paragraph [118] of Hay et al

is directed towards the buyer taking market positions in conjunction with the buyer's production contracts. These market positions are not a part of an agricultural producer's strategic marketing plan. They are merely another way in which the buyer can make more money and take less risk to the potential detriment of a producer. It is not seen how FIG. 2 is relevant at all. In any event, Hay et al. does not even disclose "receiving a price risk...of a commodity market." Therefore this rejection should be withdrawn for this reason.

Claim 17 also requires "determining pre-sell quantities using the financial assessment score, the marketing financial risk score and the price risk of the commodity market." Hay et al. does not disclose this limitation. The Examiner relies upon paragraph [0068]; [0118]; [0113]; [0052]; as disclosing this limitation (Office Action, p. 5). This is simply incorrect and the Examiner provides no line of reasoning to support such an assertion.

Claim 17 also requires "calculating a level of crop revenue insurance to assure at least a predetermined level of income from sale of predetermined pre-sell quantities of crops, thereby underwriting the predetermined level of income by pre-selling and underwriting the pre-selling by the level of crop revenue insurance." The Examiner recognizes that Hay et al. does not disclose such a limitation and relies upon Remley et al. paragraphs [0003]; [0004]; [0040]; [0041] (Office Action, p. 5). This is simply not correct. In fact, not only does the cited portion of Remley et al. not disclose such a step, but Remley et al. actually teaches away from the claimed invention. Note that in paragraph [0003], Remley et al. discloses that "... many farmers forego crop insurance altogether, making them vulnerable to risks that can cut into profits and even drive them out of business." Instead, Remley et al. provides a guaranteed revenue adjustment associated with a production contract (See e.g. paragraph [0004]; [0007]; [0040]; [0041]). Thus, this rejection to claim 17 must be withdrawn for this independent reason as well.

Claim 17 further requires "determining a financial assessment score based on the financial assessment." Hay et al. does not disclose such a step. The Examiner cites to paragraph [0050] and [0051] and remarks that the Examiner interprets "factor" to be a form of "score." In paragraph [0050] and [0051], Hay et al. disclose risk factors. However, none of the disclosed risk factors are based on a financial assessment. Thus, Hay et al. can not be interpreted to disclose such a step.

With respect to claim 23, claim 23 depends from claim 17 and the rejections should be withdrawn for the same reasons expressed with respect to claim 17. In addition there are independent reasons for the patentability of claim 23. The Examiner recognizes that Hay does not expressly teach the specific data recited in claim 23, but the Examiner considers such language to be non-functional descriptive material not functionally involved in the steps recited. This is improper because claim 23 is directed towards "computing a weighted average of line of credit per acre, line of credit per assured income, current ratio, ratio of working capital to total crop expense, operating expense ratio, asset turnover ratio, interest expense ratio, operating profit ratio, return on assets ratio, line of credit to net worth ratio, leverage ratio, Z factor analysis, repayment margin and marginal income rate." This step is clearly a part of a functionally interrelated computing process and thus under the guidance of MPEP § 2106 is not non-functional descriptive material. Therefore, this rejection must be withdrawn.

Claim 29 is directed towards a computer-assisted method of creating a strategic independent agricultural marketing plan for an agricultural business and includes a number of steps not found in either Hay et al. or Remley et al. Claim 29, for example, requires "receiving a price risk from a marketing service, wherein the price risk is a price risk associated with a

commodity market and is determined using a computer analysis." The deficiencies of Hay et al. and Remley et al. have been discussed with respect to claim 17.

Claim 29 also requires "calculating a level of crop revenue insurance for each of the agricultural enterprises to protect revenue generated from pre-selling, thereby underwriting the pre-selling with the crop revenue insurance and underwriting the assured income with the pre-selling." Neither Hay et al. nor Remley et al. disclose such a limitation and in fact, both teach away from such a step for the reasons expressed with respect to claim 17.

Claims 18 and 19 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Remley et al. (US 2002/0023052 A1) in view of Hay et al. (US 2002/0059091 A1). Claim 18 requires "underwriting financing of an independent agricultural producer of the agricultural crops by developing a strategic marketing action plan for the independent producer which provides the assured income based on a minimum level of crop yield and a predetermined minimum crop price achieved by pre-selling, the developing of the strategic marketing action plan including determination of a financial assessment score associated with the producer and a marketing financial risk score defining financial risks related to markets and income of the producer to assist in determining the assured income for the producer." Neither Remley et al. nor Hay et al. alone or together this limitation. The Examiner recognizes that Remley et al. does not disclose such a limitation. The Examiner considers Hay et al, to disclose this limitation, citing to paragraph [0051]; paragraph [0052]; and paragraph [0064]. This is not correct. Paragraph [0051] discloses risk factors associated with a farm. These risk factors appear to all be production risks and not market risks which are consistent with a production contract. Hay et al. does not disclose providing an assured income for the producer. There is a contract price thus market risks are removed, but production risks are still in play and a producer may not produce

enough crop to meet their contract. Thus, Hay et al. does not provide for determining an assured income for the producer. Nor does Hay et al. determine an assured income based on a financial assessment score and a marketing financial risk score. Hay et al. is inconsistent with such an approach as it does not recognize that producers who are able to take more risk may be willing to do so in exchange for the potential of higher income. Therefore this rejection to claim 18 must be withdrawn on this basis as well.

As claim 19 depends from claim 18, this rejection must also be withdrawn. There is also an independent reason for patentability of claim 19. Claim 19 requires that "the financing is provided to a producer conditioned on use of the strategic marketing plan." Neither Hay et al, nor Remley et al. is concerned with a strategic marketing plan of a producer. Hay et al. and Remley et al. are concerned with production contracts. Providing financing based on production contract is not the same as providing financing based on a strategic marketing plan. Therefore this rejection must be withdrawn for this independent reason.

Claims 20, 21, and 22 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Hay et al. (US 2002/0059091 A1) in view of Remley et al. (US 2002/0023052 A1), and further in view of Friedman ("Dictionary of Business Terms"). Claims 20-22 depend from claim 17. The deficiencies of Hay et al. and Remley et al. have already been discussed with respect to claim 17. Friedman et al. merely discloses the existence of a Z-factor and therefore does not remedy those deficiencies. Again it is noted, that Friedman does not the use of a Z-factor with respect to an agricultural production business, and no convincing line of reasoning is presented by the Examiner to do so.

Claims 24-28 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Hay et al. (US 2002/0059091 A1) in view of Remley et al. (US 2002/0023052 A1), and further in view of

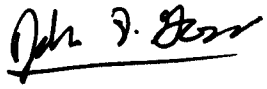
Schneider (US 6,990,459 B2). Claims 24-28 depend from claim 17 the deficiencies of Hay et al and Remley et al. have already been discussed with respect to claim 17. Schneider et al. is directed towards a production system and does not remedy the deficiencies of Hay et al. and Remley et al. Therefore, these rejections must also be withdrawn.

Conclusion

All pending claims are in proper form for immediate allowance. An extension of time from August 17, 2006 to September 17, 2006 was filed and paid on August 7, 2006. A second extension of time from September 17, 2006 to October 17, 2006, was filed and paid on September 5, 2006. No fees or extensions of time are believed to be due in connection with this amendment; however, consider this a request for any extension inadvertently omitted, and charge any additional fees to Deposit Account No. 26-0084.

Reconsideration and passage to issuance is respectfully requested.

Respectfully submitted,



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